



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 20 2002

OFFICE OF  
CIVIL RIGHTS

**RETURN RECEIPT REQUESTED**  
**Cert. No. 7001-2510-0003-3058-6612**

**In Reply Refer to:**  
**EPA OCR File No. 2R-02-R9**

Jacqueline Schafer  
Director  
Arizona Department of Environmental Quality  
1110 West Washington St.  
Phoenix, Arizona 85007

**Re: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT**

Dear Ms. Schafer:

On January 28, 2002, Don't Waste Arizona, Inc. (DWA), an environmental justice organization with members from the towns of Hayden and Winkelman, Arizona, sent a civil rights complaint to the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). The complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and EPA's regulations implementing Title VI at 40 C.F.R. Part 7, by the Arizona Department of Environmental Quality (ADEQ). (A copy of the complaint is enclosed.) The purpose of this letter is to inform you that this complaint has been accepted for investigation by EPA.

In the complaint, DWA makes two allegations. First, DWA alleges that ADEQ intentionally discriminated against Latino residents in Hayden and Winkelman by its repeated failure to provide a reliable mechanism for those residents to complain about alleged air pollution violations at the ASARCO-Hayden copper smelter facility in Hayden, a facility for which ADEQ issued a permit. In particular, DWA alleges that an ADEQ telephone hotline (1-800-234-5677) has been ineffective as a method for Latinos in Hayden and Winkelman to report pollution concerns about the ASARCO-Hayden copper smelter. DWA alleges that the hotline provides no way to leave a message or complaint about problems at the facility during the evening, nighttime, or weekend. This is particularly troublesome for DWA, because it believes that numerous emissions problems at the facility have occurred during nighttime hours, and allegedly residents have no method to complain about these problems when they occur at night.

DWA also alleges that when Latino residents have telephoned the hotline during normal business hours, either no one at ADEQ has been able to take their calls, or no ADEQ official receiving the call has been qualified to address their concerns. DWA refers to two specific

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incidents that describe this allegation. First, on December 3, 2001, a DWA member telephoned the ADEQ hotline about alleged excess daytime smoke and emissions at the facility, but she did not reach anyone at ADEQ. Second, sometime in January 2002, another resident telephoned the hotline to report alleged problems with sulfuric acid emanating from the facility, but was informed that all of the "qualified staff" had left the office for that day. DWA also alleges in this second instance that the receptionist with whom the resident spoke declined to take a message or to take vital contact information from the resident. DWA believes that the receptionist had not been trained to obtain this information. DWA alleges that it has adequately notified ADEQ about its dissatisfaction with the hotline, but that ADEQ has deliberately and intentionally discriminated against Latino residents by its failures to rectify the problems with the hotline.

DWA's second allegation is that ADEQ's failure to rectify the alleged problems with the hotline has resulted in a discriminatory effect on Latino residents in Hayden and Winkelman. DWA alleges that Hayden and Winkelman are over 90% Latino, and that there are currently serious problems and adverse health consequences in these towns associated with smoke and particulate matter emitted from the ASARCO-Hayden facility. Thus, DWA believes that ADEQ's failure to rectify problems with its hotline or to otherwise provide an effective mechanism to process complaints and concerns about the facility has allegedly exacerbated the disproportionate, adverse health risks of Latinos in Hayden and Winkelman.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). DWA's complaint meets the jurisdictional requirements described in EPA's Title VI regulations for investigations. First, the complaint is in writing. 40 C.F.R. § 7.120(b)(1). Second, it alleges that ADEQ violated EPA's Part 7 regulations by intentionally discriminating against Latinos in Hayden and Winkelman by repeatedly failing to provide an effective complaint mechanism regarding the ASARCO-Hayden copper smelter (*e.g.*, by having an ineffective hotline). DWA also alleges that ADEQ violated Part 7 by its repeated failure to provide an effective complaint mechanism, which has resulted in a discriminatory effect on Latinos in Hayden and Winkelman (*i.e.*, by exacerbating health risks for Latinos in those towns). 40 C.F.R. § 7.120(b)(1). Third, the alleged discriminatory acts occurred as recently as December 3, 2001, and January 2002, both of which occurred within 180 calendar days of the date on which the complaint was filed with EPA (*i.e.*, February 22, 2002). 40 C.F.R. § 7.120(b)(2). Fourth, ADEQ was a recipient of EPA financial assistance at the time of the alleged discriminatory act. 40 C.F.R. § 7.15. Based on these facts, the allegations against ADEQ described in this letter are accepted for investigation.

Pursuant to 40 C.F.R. § 7.120 (d)(1)(iii), OCR requests that ADEQ make a written response to the complaint within 30 calendar days of receiving this letter. ADEQ's response should include a description of the process for residents of Hayden and Winkelman to file complaints about alleged problems with facilities that ADEQ is authorized to regulate, and of the ADEQ complaints response process. It should also address DWA's specific allegations about problems with the ADEQ hotline. In addition, ADEQ should provide an explanation of why it believes that its activities were or are not discriminatory.



EPA's Title VI regulations provide that OCR must attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR will discuss offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders. If you are interested in an informal resolution of the complaint, please inform OCR within 30 days of receipt of this letter. If you have any questions, please contact OCR by telephone at 202-564-7272, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460-1000.

Sincerely,



Karen Higginbotham  
Acting Director

Enclosure

cc: Stephen M. Brittle  
President  
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Phoenix, AZ 85040

Rafael DeLeón  
Associate General Counsel  
Civil Rights Law Office (MC 2399A)  
EPA Office of General Counsel  
(w/ copy of complaint)

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Jo Ann Asami  
Title VI Contact  
EPA Region 9  
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